

# Avoiding the ESA Ambulance

Why more landowners are working with FWP to keep Montana wildlife from ending up in the Endangered Species Act emergency room.

BY ANDREW MCKEAN

**T**he fastest way to start a fight in many parts of Montana is to walk into a tavern and praise the Endangered Species Act. In bars and around kitchen tables throughout the state, the federal law created to recover endangered species is often cursed, vilified, and even considered a type of government-sponsored land grab.

Montana Fish, Wildlife & Parks officials say they understand why people may view the environmental law with such derision. “The ESA can be intimidating for some landowners who, whether it’s justified or not, fear losing control over their property and livelihood,” says Chris Smith, the department’s chief of staff. But Smith also says the ESA, established in 1973, is having positive consequences—though maybe not as the law’s authors envisioned.

One example is the Big Hole River, home to the lower 48 states’ last intact river-dwelling population of arctic grayling. It’s likely the Big Hole’s grayling will soon be listed as federally endangered. Over the past several years, FWP biologists have been working with ranchers and other Big Hole landowners who use water from the river to enact specific water conservation measures that benefit the fish. With state and federal funding, landowners who have entered into what are called Candidate Conservation Agreements with Assurances (CCAAs) for arctic grayling are retrofitting headgates, fixing leaky irrigation ditches, and even changing watering schedules to benefit the fish. In return, the U.S. Fish & Wildlife Service has agreed to not impose stricter regulations if the grayling becomes listed as an endangered species.

“The Endangered Species Act can be good for conservation, but not always in the ways it was intended,” says FWP’s former Native Fish Program manager Bob Snyder (now head of the department’s hatchery system), who has worked with local biologists to establish the federal conservation agreements with Big Hole landowners.

**DODGING A BULLET** Though widespread in Montana, the black-tailed prairie dog was petitioned for listing in 1998 as a federally threatened species because it was disappearing elsewhere in its range. Though the U.S. Fish & Wildlife Service eventually decided to not list prairie dogs, the possibility continues for other species in Montana to become federally threatened or endangered. That has persuaded some landowners to begin working with state and federal conservation agencies to conserve critical wildlife habitat.

TIM CHRISTIE

“Many landowners conserve wildlife habitat on their own, but some have told us it took the likelihood of federal listing to convince them to meet with FWP and the USFWS.”

Snyder explains that the ESA’s purpose is to stop wildlife from becoming extinct. Yet too often, once a species is listed it can be nearly impossible to restore populations to previous numbers. “We prefer to work with landowners to conserve critical habitat for a whole community of species before the most imperiled member of that community is listed as endangered,” he says. “That’s the best way to keep the landscape healthy, to conserve as many species as possible, and to ensure no species becomes



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extinct—or even becomes listed.”

Snyder says many landowners are already doing what’s right for wildlife. But for some, he says, it takes additional incentives to convince them to work with conservation agencies. “The ESA looming out there in the distance is often that incentive.”

*Andrew McKean manages FWP’s Regional Information and Education Program in Glasgow.*

**THE LIST**

The Endangered Species Act was passed overwhelmingly by Congress in 1973 as the federal government’s primary tool to stop wildlife species from becoming extinct. The act, an expression of the global environmental movement of the late 1960s, has had some high-visibility successes, notably the recovery of the peregrine falcon. The ESA is also credited with boosting grizzly bear numbers in the Greater Yellowstone Ecosystem to the point where that population is being considered for removal from federal protection. However, most species listed as threatened or endangered remain on the list—even, as is the case with bald eagles, when populations are thriving. Currently the USFWS, which manages federally listed species, counts roughly 1,000 U.S. species as endangered (a species “in danger of extinction throughout all or a significant portion of its range”) or threatened (a species “likely to become endangered within the foreseeable future”). Another 280 species are listed as “candidates” (there is evidence the species could become extinct) for joining the list.

Though reviled by some, the ESA remains widely popular among most Americans. Several federal lawmakers have proposed eliminating or changing the law, but nationwide public support would make any significant changes difficult.

The USFWS tries to stem a listed species’ population decline by using regulations that

limit harm to the animals or their habitat (such as by restricting development). Because private property rights limit government intervention, the federal government’s main ESA enforcement tool is to withhold or impose conditions on permission for activities on federal land. The USFWS may also modify any project—even those on private land—that receives federal funding if the project might harm a federally listed species. In other words, only if a landowner receives something from the federal government, whether it’s a farm subsidy payment or a permit to drain wetlands, can the government require that the landowner not harm threatened or endangered species. In Montana, this can include limiting livestock grazing on Bureau of Land Management and U.S. Forest Service land, reducing irrigation from federally funded water projects, and restricting or even prohibiting road or subdivision construction in areas containing critical habitat for listed species.

**FEDERAL STICK, STATE CARROT**

Chris Smith, FWP chief of staff, says the federal “stick” needs to be balanced with positive motivators, such as by financially rewarding conservation practices already taking place on private land.

“Most landowners in Montana are good stewards of the land,” he says. “In many cases, they’ve inherited well-managed property and want to pass that conservation legacy to future generations. They have a deep interest in preserving the quality of the habitat and species distributions. We in FWP have those same interests. That’s why it makes sense to work together toward our shared goal—keeping common species common and making sure declining species



PAT CLAYTON / FISHEYEUPHOTOGRAPHY.COM

**DYING FOR WATER** The combination of long-term drought and the removal of water for irrigation has been a double whammy for Big Hole River arctic grayling. Recently many area ranchers have agreed to use less water in exchange for protection from stricter federal regulations if the grayling becomes federally listed.

have intact critical habitat.”

FWP uses incentive programs to provide an economic benefit to landowners who participate in conserving critical habitat, such as sagebrush. Sage-grouse, regularly petitioned for ESA listing, require large expanses of sagebrush for food, nesting, and shelter. “If market forces related to livestock production create an incentive to convert sagebrush to a cultivated field or burn sagebrush to increase the grass base,” says Smith, “then we need to have a more attractive incentive for landowners to keep sagebrush habitat intact.”

FWP’s Sagebrush Initiative matches federal funds with hunters’ license dollars to pay landowners up to \$12 per acre to protect sagebrush habitat for up to 30 years. As more landowners sign up for the voluntary sagebrush habitat conservation program, USFWS investigators may decide the sage-grouse doesn’t need federal protection.

FWP and federal conservation agencies

also maintain programs that pay landowners to conserve waterfowl habitat, improve fish habitat, and protect entire landscapes through conservation easements. FWP officials are now looking to see if a new federal funding source, State Wildlife Grants, may be used to provide financial incentives for landowners to conserve habitat landscapes that support an even wider variety of wildlife, from salamanders to prairie fish.

**STATE OR FEDERAL RESPONSIBILITY?**

Any discussion of endangered species management raises a fundamental question: Who’s responsible for ensuring animals and plants don’t become extinct?

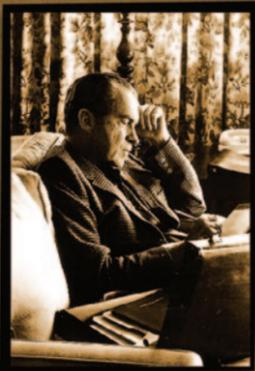
Proponents of the Endangered Species Act say the federal government is often best equipped to protect wide-ranging endangered species. They point to the federal ban on DDT, for example, as essential to the peregrine falcon’s recovery. If protection were left

to individual states, argues Kieran Suckling of the Center for Biological Diversity, peregrines and many other species might now be extinct.

“When species cross state or national boundaries, it is much easier for the feds to coordinate recovery efforts,” he says.

Federal protection may be necessary for species on the brink of extinction that move great distances across jurisdictional boundaries, but some states and individuals maintain that federal authority over a species may not always be in its best interest. For example, the ESA can work as a disincentive to conserve habitat and the species that depend on it. That’s the opinion of Ken Blunt, a Malta realtor and rancher who has worked on black-footed ferret, prairie dog, and sage-grouse issues in his community.

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**ENDANGERED MEANS THERE’S STILL TIME** President Richard M. Nixon signed the Endangered Species Act into law in 1973. “Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed,” he wrote. Since then, more than 1,000 species have been listed, but only 12, including the peregrine falcon, have recovered and been removed from the list.



**EXTINCT**  
Phantom shiner



**ENDANGERED**  
White sturgeon



**THREATENED**  
Water howellia



**CANDIDATE**  
Yellow-billed cuckoo

**RECOVERED and DELISTED**  
Peregrine falcon



FROM LEFT: NIKON PRESIDENTIAL LIBRARY; CALPHOTOS.NET; CALPHOTOS.NET; KRISTI DUBOIS; ISTOCKPHOTO.COM

says Blunt. He argues that landowners whose property harbors the last population of an imperiled species suffer disproportionate restrictions compared to landowners whose poor conservation practices led to the species' decline. "People need to be rewarded for having and preserving good habitat," Blunt adds. "With sage-grouse, for instance, ranchers who conserve the best private habitat should be given a reduced price for grazing leases on BLM land."

Some states maintain they too are unfairly punished by the federal government for maintaining healthy populations of species in trouble elsewhere. Montana contends that it holds healthy populations of grizzly bears, gray wolves, sage-grouse, bull trout, and prairie dogs. However, because these species have disappeared from other states, federal restrictions either have been or threaten to be imposed on Montana.



**The goal should be to avoid an ESA emergency. That's why we're advocating preventive care with landowners.**



In 2004, frustrated that the federal government was delaying removal of gray wolves from the endangered species list, FWP director Jeff Hagener wrote to the USFWS and strongly requested that it delist on a state-by-state basis.

"I told them that if they didn't delist in states like Montana that had done a good job of either conserving or restoring species, then the states would have no incentive to work

with the feds on these or any other endangered species," Hagener says.

**THE ESSENTIAL LANDOWNER**

FWP's frustration with the ESA has not lessened the department's commitment to protecting threatened and endangered species. In fact, it has strengthened ties between FWP and Montana landowners. That cooperation is essential for endangered species conservation because more than 60 percent of Montana is in private ownership. What landowners do on their property greatly affects wildlife.

No conservation or management discussion can afford to omit landowners, says Mike Aderhold, who retired last year as supervisor of FWP's north-central region. In his briefcase, Aderhold keeps a tattered rag of paper containing a 1931 quote from Aldo Leopold, the famous conservation pioneer. "Recognize the landowner as the custodian of public game on private lands, protect him from the irresponsible shooter, and compensate him for putting his land in productive condition," reads part of the quote. "Make game management a partnership

enterprise to which the landowner, the sportsman, and the public each contribute appropriate services, and from which each derives appropriate rewards."

Aderhold says he would sometimes hand the paper to a rancher engaged in a seemingly intractable debate with FWP officials.

"The quote is a reminder of the essential common interests shared by landowners, wildlife biologists, and conservation-minded

**ENDANGERED HEREFORDS?** Economic threats to the ranching economy and tradition have long concerned conservation leaders who believe in rewarding healthy land stewardship. "Recognize the landowner as the custodian of public game on private lands," wrote Aldo Leopold, "protect him from the irresponsible shooter, and compensate him for putting his land in productive condition."

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citizens," Aderhold says.

Aderhold points out that ranchers and farmers throughout western Montana are under intense economic pressure, which in turn puts pressure on wildlife habitat. Commodity producers statewide struggle to remain solvent in the face of rising energy costs and stagnant market prices. Just to break even, ranches and farms need to increase in size and productivity. That means plowing more prairie, irrigating more bottomland, and grazing more cows—all practices that can endanger certain native wildlife species. The alternative often has been to sell the property for trophy home subdivisions—which fragment habitat and increase fencing that blocks wildlife movement.

Yet there are other options. FWP buys conservation easements on some ranches containing critical wildlife habitat. And sev-

eral state and federal programs provide compensation for good land stewardship. Smith says FWP continues to explore new ways of providing economic incentives to reward wildlife-friendly land-use practices. He and other FWP officials encourage landowners to work with the department to find new ways to mitigate major forces now affecting both wildlife habitat and traditional agricultural economies.

"Montana is at an ecological crossroads," says Smith. "Time is running out on our ability to proactively conserve large-scale landscapes—both for wildlife and for ranching. We want landowners who share FWP's conservation ethic and conservation groups concerned with wildlife habitat and livable communities to work with us to figure out how to manage the rapid land-use changes across much of the state."

Smith points to real estate development in

western Montana that is turning working ranches and wildlife habitat into shopping malls and housing complexes. Global warming is accelerating threats to species such as arctic grayling that evolved in cooler climates, putting additional pressure on landowners who share water with the increasingly rare fish.

"We need to act now before things worsen," he says.

Smith and other FWP officials believe it's essential for Montana to conserve its most critical landscapes, such as the foothill grasslands that support not just elk and mule deer but also potentially endangered species such as the pygmy rabbit. "It makes biological and economic sense to conserve large, critical habitats before the wildlife species that use them become threatened or endangered," says Smith. By looking at the big picture of large-scale habitat protection, he says,

Montanans can focus on their common interest in saving forests, grasslands, and rivers as well as the wildlife and human communities those lands and waters support. That's the only way, says Smith, to keep the ESA "ambulances" out of Montana.

"Think of the Endangered Species Act as an emergency room," he says. "It works best when it can address a trauma and stop a species from disappearing. But the goal should be to avoid an emergency. That's why we're advocating preventive care with landowners. It's a lot less expensive to treat an ailment before it becomes an emergency, and that's also true with wildlife species. We want to work with landowners on habitat-scale projects to ensure species stay out of trouble while farms and ranches stay productive. Our goal is to make sure no wildlife species—and no farmer or rancher—ever ends up on the endangered species list in Montana." 🐾



**LOSING CONTROL** As in Alaska today (photo below), Montana had a long history of holding carefully regulated hunting seasons that maintained healthy grizzly bear populations. But after the species was declared federally threatened in the lower 48 states, Montana was forced to end hunting because antihunting organizations successfully petitioned a federal court to halt the season. Sage-grouse, bull trout, and westslope cutthroat trout are other Montana game species for which federal listing can restrict harvest opportunities.

FROM LEFT: WILDALASKANGUIDES.COM; DONALDLOWENES.COM